

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

50961

FILE: B-184151

DATE: July 31, 1975

MATTER OF: American Ship Building Company

97322

DIGEST:

Payment on quantum meruit or quantum valebant basis is authorized in case of completed contract since contractor, while failing to prove intended bid; did establish existence of error of which contracting officer had constructive notice.

The Coast Guard has requested our approval of the proposed reformation of its contract DOT-CG09-8216(S) with the American Ship Building Company (American) for drydocking and repairs to the USCGC SUNDEW. The proposed reformation requested by American because of a mistake in bid would increase the price of contract item C-1D (Sandblast and Paint Underwater Body-100% of total area) from \$2,017.62 to \$8,620. For the reasons stated below, American may be compensated for the reasonable value of the services and materials furnished under the item.

Invitation for bids No. CD-8216-75 was issued on August 23, 1974, for the work in question. American's bid (\$80,110 for all definite items, \$4,013 for all optional items, and \$20,625 for all contingency items) was the only one received. On September 24, 1974, American was awarded all definite and optional items (total price \$84,123). By telephone conversation on October 4, 1974, item C-1D was awarded to American at the price (\$2,017.62) shown in the company's bid for the item.

By letter dated October 8, 1974, American advised that past recorded data of hours and material used on similar work had been incorrectly used in computing its price for the item. Consequently, the Company requested an adjustment in the contract price.

Subsequent correspondence with the Company elicited the following information on the mistake: (1) 113 work hours were erroneously used as the total number of hours estimated for the item instead of 313 hours--the total previously expended on similar work; (2) for pricing purposes, the 113 hours were further reduced to 96 hours; (3) the contractor's Toledo facility added 187 hours to the 313 work hours previously expended on similar work in order to arrive at a final work hour figure for use in computing the corrected price; (4) the actual number of hours to do the work amounted to 720.

In view of this analysis, the Coast Guard states that the evidence is clear and convincing that a bona fide mistake was made by American. It further urges that the mistake was so apparent as to have charged the contracting officer with notice of the error since the Government estimate for the item was \$8,000 (in comparison with the \$2,017.62 figure actually bid) and the contracting officer knew that recent similar work on another vessel was done for \$7,348.


Where a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral mistake unless the contracting officer was on actual or constructive notice of the error prior to award. Saligman v. United States, 56 F. Supp. 505 (E. D. Pa. 1944); Wender Presses, Inc. v. United States, 170 Ct. Cl. 483 (1965). In determining whether a contracting officer has a duty to verify bid prices we have stated:

"* * * the test is whether under the facts and circumstances of 'the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer' (Welch, Mistakes in Bid 18 Fed. B. J. 75, 83) * * *" 49 Comp. Gen. 272, 274 (1969), quoting B-164845, January 27, 1969.

Ordinarily, where, as here, only one bid is received on an item, there is no basis for comparison of bids and hence nothing to place the contracting officer on notice of probability of error. James R. Sloss, B-180402, February 4, 1974. Here, however, we think it is clear from the Coast Guard's analysis that the contracting officer was on constructive notice of error and that he should have sought verification from American as to the accuracy of its bid for item C-1D. See Crater Power - Vac, B-182917, March 6, 1975. Under these circumstances, a contractor could be relieved of its obligation to perform. C. N. Monroe Manufacturing Company v. United States, 143 F. Supp. 449 (E. D. Mich, 1956).

To permit correction of an error in bid after award, the contractor, in addition to showing clear and convincing evidence of an error in bid of which the contracting officer has constructive notice, must also submit documentary evidence of the bid actually intended. International Harvester Company, B-183424, April 30, 1975. The Coast Guard points out, however, that given the varying quantities of production hours cited by American in its correspondence, the "bid actually intended" cannot be accurately determined. Thus, reformation would not be a suitable remedy since the remedy is based, in part, on determination of the bid actually intended.

Nevertheless, based on our review of the Coast Guard's detailed examination and analysis of the various hours and material costs involved, and since the contract work has been completed and rescission is no longer feasible, we believe that payment may be made to American on a quantum meruit or quantum valebant basis--that is, the reasonable value of the services and materials actually furnished. See International Harvester Company, supra. Thus, American may be paid \$8,620,000, as administratively recommended, which represents the reasonable value of item C-1D.


Deputy Comptroller General
of the United States